

R277-516 received final approval by the Utah State Board of Education on July 14, 2017. R277-516 is published in the August 15, 2017 Utah State Bulletin, subject to a 30-day comment period, with a first possible effective date of September 21, 2017.

R277. Education, Administration.

R277-516. [~~Background Check Policies and Required Reports of Arrests for Licensed Educators, Volunteers,~~Professional Standards and Training for Non-licensed Employees~~], and Charter School Governing Board Members] and Volunteers.~~

R277-516-1. Authority and Purpose.

- (1) This rule is authorized by:
 - (a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;
 - (b)(i) Subsections 53A-1-301(3)(a) and 53A-1-301(3)(d)(x), which instruct the Superintendent to perform duties assigned by the Board that include:
 - (ii) presenting to the Governor and the Legislature each December a report of the public school system for the preceding year that includes:
 - (A) investigation of all matters pertaining to the public schools; and
 - (B) statistical and financial information about the school system which the Superintendent considers pertinent;
 - (c) Subsections 53A-1-402(1)(a)(i) and (iii), which direct the Board to:
 - (i) establish rules and minimum standards for the public schools regarding the qualification and certification of educators and ancillary personnel who provide direct student services; and
 - (ii) the evaluation of instructional personnel; and
 - (d) Title 53A, Chapter 15, Part 15, Background Checks, which directs the Board to require educator license applicants to submit to background checks and provide ongoing monitoring of licensed educators.
 - (2) The purpose of this rule is to ensure that all students who are compelled by law to attend public schools, subject to release from school attendance consistent with Section 53A-11-102, are instructed and served by public school teachers and employees who have not violated laws that would endanger students in any way.

R277-516-2. Definitions.

- (1) "Association" means the same as that term is defined in Subsection 53A-1-1601(3).
- (~~[1]~~2) "Charter school governing board" means a board designated by a charter school to make decisions for the operation of the charter school.
- (~~[2]~~3) "Charter school board member" means a current member of a charter school governing board.
- (~~[3]~~4) "Comprehensive Administration of Credentials for Teachers in Utah Schools (CACTUS)" means the database maintained on all licensed Utah educators, which includes information such as:
 - (a) personal directory information;
 - (b) educational background;
 - (c) endorsements;
 - (d) employment history;
 - (e) professional development information;

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(f) completion of employee background checks; and

(g) a record of disciplinary action taken against the educator.

([4]5) "Contract employee" means an employee of a staffing service who works at a public school under a contract between the staffing service and the public school.

([5]6) "DPS" means the Department of Public Safety.

([6]7) "LEA" or "local education agency" for purposes of this rule includes the Utah Schools for the Deaf and the Blind.

([7]8)(a) "Licensed educator" means an individual who holds a valid Utah educator license and has satisfied all requirements to be a licensed educator in the Utah public school system (examples are traditional public school teachers, charter school teachers, school administrators, Board employees, and school district specialists).

(b) A licensed educator may or may not be employed in a position that requires an educator license.

(c) A licensed educator includes an individual who:

(i) is student teaching;

(ii) is in an alternative route to licensing program or position; or

(iii) holds an LEA-specific competency-based license.

([8]9) "Non-licensed public education employee" means an employee of a an LEA who:

(a) does not hold a current Utah educator license issued by the Board under Title 53A, Chapter 6, Educator Licensing and Professional Practices; or

(b) is a contract employee.

([9]10) "Public education employer" means the education entity that hires and employs an individual, including public school districts, the Utah State Office of Education, Regional Service Centers, and charter schools.

([10]11) "Utah Professional Practices Advisory Commission" or "UPPAC" means an advisory commission established to assist and advise the Board in matters relating to the professional practices of educators, established in Section 53A-6-301.

([11]12) "Volunteer" means a volunteer who may be given significant unsupervised access to children in connection with the volunteer's assignment.

R277-516-3. Licensed Public Education Employee Personal Reporting of Arrests.

(1) A licensed educator who is arrested, cited or charged with the following alleged offenses shall report the arrest, citation, or charge within 48 hours or as soon as possible to the licensed educator's district superintendent, charter school director or designee:

(a) any matters involving an alleged sex offense;

(b) any matters involving an alleged drug-related offense;

(c) any matters involving an alleged alcohol-related offense;

(d) any matters involving an alleged offense against the person under Title 76, Chapter 5, Offenses Against the Person;

(e) any matters involving an alleged felony offense under Title 76, Chapter 6, Offenses Against Property;

(f) any matters involving an alleged crime of domestic violence under Title 77,

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Chapter 36, Cohabitant Abuse Procedures Act; and

(g) any matters involving an alleged crime under federal law or the laws of another state comparable to the violations listed in Subsections (a) through (f).

(2) A licensed educator shall report convictions, including pleas in abeyance and diversion agreements within 48 hours or as soon as possible upon receipt of notice of the conviction, plea in abeyance or diversion agreement.

(3) An LEA superintendent, director, or designee shall report conviction, arrest or offense information received from a licensed educator to the Superintendent within 48 hours of receipt of information from a licensed educator.

(4) The Superintendent shall develop an electronic reporting process on the Board's website.

(5) A licensed educator shall report for work following an arrest and provide notice to the licensed educator's employer unless directed not to report for work by the employer, consistent with school district or charter school policy.

R277-516-4. Non-licensed Public Education Employee, Volunteer, and Charter School Board Member Background Check Policies.

(1) An LEA shall adopt a policy for non-licensed public education employee, volunteer, and charter school board member background checks that includes at least the following components:

(a) a requirement that the individual submit to a background check and ongoing monitoring through registration with the systems described in Section 53A-15-1505 as a condition of employment or appointment; and

(b) identification of the appropriate privacy risk mitigation strategy that will be used to ensure that the LEA only receives notifications for individuals with whom the LEA maintains an authorizing relationship.

(2) An LEA policy shall describe the background check process necessary based on the individual's duties.

R277-516-5. Non-licensed Public Education Employee, Volunteer, or Charter School Board Member Arrest Reporting Policy Required from LEAs.

(1) An LEA shall have a policy requiring a non-licensed public employee, a volunteer, a charter school board member, or any other employee who drives a motor vehicle as an employment responsibility, to report offenses specified in Subsection (3).

(2) An LEA shall post the policy described in Subsection (1) on the LEA's website.

(3) An LEA's policy described in Subsection (1) shall include the following minimum components:

(a) reporting of the following:

(i) convictions, including pleas in abeyance and diversion agreements;

(ii) any matters involving arrests for alleged sex offenses;

(iii) any matters involving arrests for alleged drug-related offenses;

(iv) any matters involving arrests for alleged alcohol-related offenses; and

(v) any matters involving arrests for alleged offenses against the person under Title

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76, Chapter 5, Offenses Against the Person.

(b) a timeline for receiving reports from non-licensed public education employees;
(c) immediate suspension from student supervision responsibilities for alleged sex offenses and other alleged offenses which may endanger students during the period of investigation;

(d) immediate suspension from transporting students or public education vehicle operation or maintenance for alleged offenses involving alcohol or drugs during the period of investigation;

(e) adequate due process for the accused employee consistent with Section 53A-15-1506;

(f) a process to review arrest information and make employment or appointment decisions that protect both the safety of students and the confidentiality and due process rights of employees and charter school board members; and

(g) timelines and procedures for maintaining records of arrests and convictions of non-licensed public education employees and charter school board members.

(4) An LEA shall ensure that the records described in R277-516-5(3)(g):

(a) include final administrative determinations and actions following investigation;
and

(b) are maintained:

(i) only as necessary to protect the safety of students; and

(ii) with strict requirements for the protection of confidential employment information.

R277-516-6. Association Professional Standard Setting, Training, and Monitoring.

(1) Beginning with the 2017-2018 school year, a public school may not be a member of, or pay dues to an association that adopts rules or policies that are inconsistent with this R277-516-6.

(2) An association shall establish policies or rules that require:

(a) coaches and individuals who oversee interscholastic activities or work with students as part of an interscholastic activity to meet a set of professional standards that are consistent with the Utah Educator Professional Standards described in Rule R277-515; and

(b) the association or public school to annually train each coach or other individual who oversees or works with students as part of an interscholastic activity of a public school on the following:

(i) child sexual abuse prevention as described in Section 53A-13-112;

(ii) the prevention of bullying, cyber-bullying, hazing, harassment, and retaliation as described in:

(A) Title 53A, Chapter 11a, Bullying and Hazing; and

(B) R277-613; and

(iii) the professional standards described in Subsection (2)(a).

(3) An association shall establish procedures and mechanisms to:

(a) monitor LEA compliance with the association's training requirements described in Subsection (2); and

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(b) track the employment history of individuals who receive a certification from the association.

R277-516-[6]7. Public Education Employer Responsibilities Upon Receipt of Arrest Information.

(1) A public education employer that receives arrest information about a licensed public education employee shall review the arrest information and assess the employment status consistent with Section 53A-6-501, Rule R277-515, and the LEA's policy.

(2) A public education employer that receives arrest information about a non-licensed public education employee, volunteer, or charter school board member shall review the arrest information and assess the individual's employment or appointment status:

(a) considering the individual's assignment and duties; and

(b) consistent with a local board-approved policy for ethical behavior of non-licensed employees, volunteers, and charter school board members.

(3) A local board shall provide appropriate training to non-licensed public education employees, volunteers, and charter school board members about the provisions of the local board's policy for self-reporting and ethical behavior of non-licensed public education employees, volunteers, and charter school board members.

(4) A public education employer shall cooperate with the Superintendent in investigations of licensed educators.

R277-516-[7]8. Misconduct Notification Requirements and Procedures.

(1)(a) An educator who has reasonable cause to believe that a student may have been physically or sexually abused by a school's employee shall immediately report that belief to:

(i) law enforcement;

(ii) the school principal; and

(iii) to any other entity to which a report is required by law.

(b) A school administrator who receives a report described in Subsection (1)(a) shall immediately submit the information to UPPAC if the employee is licensed as an educator.

(2) A local superintendent or charter school director shall notify UPPAC if an educator is determined, pursuant to an administrative or judicial action, or internal LEA investigation, to have had disciplinary action taken for, or, to have engaged in:

(a) unprofessional conduct or professional incompetence that:

(i) results in suspension for more than one week or termination;

(ii) requires mandatory licensing discipline under R277-515; or

(iii) otherwise warrants UPPAC review; or

(b) immoral behavior.

(3) An educator who fails to comply with Subsection (1) may:

(a) be found guilty of unprofessional conduct; and

(b) have disciplinary action taken against the educator.

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(4) The Superintendent may withhold, reduce, or terminate funding to an LEA for failure to make a required report under this R277-516 through the process described in Rule R277-114.

KEY: school employees, self reporting, background check

Date of Enactment or Last Substantive Amendments: ~~[August 12, 2016]~~2017

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Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-301(3)(a); 53A-1-301(3)(d)(x); 53A-1-402(1)(a)(i); 53A-1-402(1)(a)(iii)